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17 UNITED STATES DISTRICT COURT
18 CENTRAL DISTRICT OF CALIFORNIA

19 LOS ANGELES WATERKEEPER, a non-
20 profit corporation,

21 Plaintiff,

22 vs.
23

24 AJAX FORGE CO., a corporation,

25 Defendants.
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27
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Case No.: 2:17-cv-02066-ODW-GJS

**[PROPOSED] CONSENT DECREE
AND ORDER**

**(Federal Water Pollution Control Act,
33 U.S.C. § 1251 *et seq.*)**

1 **WHEREAS**, Los Angeles Waterkeeper (“Waterkeeper”) is a 501(c)(3) non-
2 profit public benefit corporation organized under the laws of the State of
3 California, with its main office in Santa Monica, California.

4 **WHEREAS**, Waterkeeper is dedicated to the preservation, protection and
5 defense of the surface, ground, coastal and ocean waters of Los Angeles County
6 from all sources of pollution and degradation;

7 **WHEREAS**, Defendant Ajax Forge Co. (“Defendant” or “Ajax”) owns and
8 operates a metal forging facility at 1956 East 48th Street, Los Angeles CA 90058
9 (“Facility”).

10 **WHEREAS**, on January 13, 2017, Waterkeeper sent a sixty (60) day notice
11 letter (“Notice Letter”) to Defendant, the United States Environmental Protection
12 Agency (“EPA”), EPA Region IX, the State Water Resources Control Board
13 (“State Board”) and the Regional Water Quality Control Board (“Regional
14 Board”), stating its intent to file suit for violations of the Federal Water Pollution
15 Control Act, 33 U.S.C. §§ 1251, *et seq.* (“Clean Water Act” or “CWA”). The
16 Notice Letter alleged violations of the CWA for Defendant’s alleged discharges of
17 pollutants into storm drains and receiving waters from the Facility, including the
18 Los Angeles River, the Los Angeles/Long Beach Harbor, and the San Pedro Bay
19 to the Pacific Ocean (collectively “Receiving Waters”), in violation of National
20 Pollution Discharge Elimination System (“NPDES”) General Permit No.
21 CAS000001 [State Board] Water Quality Order No. 97-03-DWQ (“1997 Permit”),
22 as superseded by Order No. 2014-0057-DWQ (“2015 Permit”). The 1997 Permit
23 and/or 2015 Permit may be referred to generically as the “Storm Water Permit”;

24 **WHEREAS**, on March 15, 2017 Waterkeeper filed a complaint
25 (“Complaint”) against Defendant in the United States District Court, Central
26 District of California (Case No. 2:17-CV-02066-ODW-GJS), entitled *Los Angeles*
27 *Waterkeeper v. Ajax Forge Co.*
28

1 **WHEREAS**, the Defendant denies all allegations of the Complaint;

2 **WHEREAS**, Plaintiff and Defendant (collectively referred to herein as the
3 “Settling Parties” or “Parties”) agree that it is in the Parties’ mutual interest to
4 enter into a Consent Decree setting forth terms and conditions appropriate to
5 resolving the allegations set forth in the Complaint without further proceedings;

6 **WHEREAS**, Defendant is operating the Facility on part time basis, has less
7 than fifteen (15) full time employees, and shared with Plaintiff excerpts of its 2015
8 and 2016 tax returns including the Statement 2 attachments demonstrating that in
9 2016 it earned less than eighty thousand dollars (\$80,000) taxable income;

10 **WHEREAS**, all actions taken by the Defendant pursuant to this Consent
11 Decree shall be made in compliance with all applicable federal, state and local
12 rules and regulations;

13 **NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE**
14 **SETTLING PARTIES AND ORDERED AND DECREED BY THE COURT**
15 **AS FOLLOWS:**

16 1. The Court has jurisdiction over the subject matter of this action
17 pursuant to Section 505(a)(1)(A) of the CWA, 33 U.S.C. § 1365(a)(1)(A);

18 2. Venue is appropriate in the Central District Court pursuant to Section
19 505(c)(1) of the CWA, 33 U.S.C. §1365(c)(1), because the Facilities at which the
20 alleged violations are taking place is located within this District;

21 3. The Complaint states a claim upon which relief may be granted
22 against Defendant pursuant to Section 505 of the CWA, 33 U.S.C. § 1365;

23 4. Waterkeeper has standing to bring this action;

24 5. The Court shall retain jurisdiction over this matter for purposes of
25 interpreting, modifying or enforcing the terms of this Consent Decree, or as long as
26 is necessary for the Court to resolve any motion to enforce this Consent Decree.

27 **I. OBJECTIVES**
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1 6. It is the express purpose of the Parties entering into this Consent
2 Decree to further the objectives set forth in the Clean Water Act, 33 U.S.C. §§
3 1251, *et seq.*, and to resolve those issues alleged by Waterkeeper in its Complaint.
4 In light of these objectives and as set forth fully below, Defendant agrees, *inter*
5 *alia*, to comply with the provisions of this Consent Decree, and to comply with the
6 requirements of the Storm Water Permit and all applicable provisions of the
7 CWA—specifically Receiving Water Limitations A, B and C at Section VI of the
8 2015 Permit, and Effluent Limitations A, B and C at Section V of the 2015 Permit,
9 which requires, *inter alia*, that Defendant develop and implement Best
10 Management Practices (“BMPs”) designed to achieve Best Available Technology
11 (“BAT”) and Best Conventional Pollutant Control Technology (“BCT”) at the
12 Facility. Defendant shall develop and implement BMPs at the Facility necessary
13 to comply with the 2015 Permit (or subsequently adopted Storm Water Permit)
14 requirement to achieve compliance with BAT/BCT standards and with the
15 applicable Water Quality Standards including, *inter alia*, standards outlined in the
16 “Water Quality Control Plan—Los Angeles Region: Basic Plan for Coastal
17 Watersheds of Los Angeles and Ventura County” (“Basin Plan”) and those
18 contained in 40 C.F.R. § 131.38 (“California Toxics Rule” or “CTR”). BMPs must
19 be developed and implemented to prevent discharges or to reduce contamination in
20 storm water discharged from the Facilities sufficient to achieve the numeric limits
21 detailed in Table 1 of this Consent Decree.

22 7. The term “Effective Date,” as used in this Consent Decree, shall mean
23 the last day for the United States Department of Justice and the United States
24 Environmental Protection Agency (collectively “Federal Agencies”) to comment
25 on the Consent Decree, i.e., the 45th day following the Federal Agencies’ receipt
26 of the Consent Decree, or the date on which the Federal Agencies provide notice
27 that they require no further review, and the Court enters the final Consent Decree.
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1 8. This Consent Decree will terminate on its own terms three (3) years
2 from the Effective Date, unless there is a prior ongoing, unresolved dispute
3 regarding Defendant's compliance with its terms. Should there be such a dispute,
4 Waterkeeper shall file a Notice of Dispute with the Court prior to the Termination
5 Date, which shall identify the issue in dispute. The filing of such a Notice of
6 Dispute shall extend the Termination Date until the Court determines the dispute
7 has been resolved and thereupon dismisses the case, or, alternatively, if the
8 Settling Parties file a stipulation for dismissal.

9 9. Defendant may move the Court to terminate the Consent Decree at
10 any time provided that the following conditions, or such alternative conditions to
11 which Defendant and Waterkeeper agree in writing after compliance with the meet
12 and confer provisions of paragraph 43 below, are satisfied:

- 13 a. Defendant has fully implemented all measures detailed in paragraph 15
14 below, and all other applicable requirements to be completed under this
15 Consent Decree prior to the date on which the Defendant moves for
16 termination;
- 17 b. Defendant has revised and fully implemented its Storm Water Pollution
18 Prevention Plans ("SWPPP") and Monitoring and Reporting Programs
19 ("M&RP") pursuant to the requirements of this Consent Decree and the
20 2015 Permit;
- 21 c. There are no ongoing, unresolved disputes regarding Defendant's
22 compliance with this Consent Decree, including but not limited to any
23 dispute related to the payment of fees/costs, Supplemental Environmental
24 Project ("SEP") implementation, compliance monitoring fees,
25 implementation of storm water and non-storm water control BMPs, and
26 compliance with numeric levels detailed below at Table 1;

1 d. All payments required under sections F (paras. 34 and 35) and G (paras.
2 38-40) of this Consent Decree are made; and

3 e. Following the Effective Date of this Consent Decree, monitoring data
4 from four (4) consecutive storm water samples collected at each
5 discharge point demonstrate pollutant concentrations in stormwater
6 discharges do not exceed the numeric levels in Table 1;

7 10. To terminate early as provided above, Defendant shall file a motion
8 for early termination with the Court. Defendant shall provide Plaintiff and its
9 counsel with written notice at least thirty-five (35) days prior to filing any motion
10 for termination of the Consent Decree.

11 11. Upon receipt of the written request to terminate, Waterkeeper may
12 conduct an inspection of the Facility within thirty (30) calendar days and Ajax will
13 work with Waterkeeper to schedule and accommodate the inspection, if requested,
14 within the 30-day period. During the Site Inspection, Defendant shall allow
15 Waterkeeper and/or its representatives access to the Facilities' SWPPP, M&RP,
16 and storm water monitoring records. Further, Defendants shall allow Waterkeeper
17 and/or its representatives to collect during the site inspection split samples of storm
18 water or non-stormwater discharges, if applicable, at the Facility. Waterkeeper
19 shall be permitted to take photographs or video recording during any Site
20 Inspection and will, upon request, provide photographs and/or video to Ajax within
21 fourteen (14) calendar days.

22 12. Unless there is an ongoing, unresolved dispute regarding Defendant's
23 compliance with this Consent Decree, thirty-five (35) calendar days after written
24 notice was given, Defendant may move the Court to terminate the Consent Decree
25 and Waterkeeper shall not oppose the motion.
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1 **II. COMMITMENTS OF THE PARTIES**

2 **A. Industrial Storm Water Pollution Control Measures**

3 13. To ensure there are no unauthorized non-stormwater discharges, any
4 non-stormwater discharges from the Facility not authorized by the Storm Water
5 Permit shall be considered a breach of this Consent Decree.

6 14. All storm water pollution measures required by this Consent Decree
7 will be implemented at the Facility. Any disputes over the adequacy and/or timing
8 of the implementation of BMPs shall be resolved pursuant to the dispute resolution
9 provisions of this Consent Decree, set out in Section IV below.

10 15. BMP Plan. Ajax has or will implement the following additional
11 BMPs by February 28, 2018 at the Facility at the location depicted in the site map
12 attached hereto as Exhibit A:

13 a. Discharge Point 1 from the drain inlet at the northeastern corner of the
14 Facility will be replaced. An inlet filter fitted with filter media to
15 address metals and total suspended solids will be installed. In addition,
16 a trench drain or a berm will be installed along the driveway running to
17 the inlet to prevent contaminated sheet flow out the driveway and to
18 direct runoff to the inlet filter before discharge.

19 b. Discharge Point 2 from drain inlet located in the southeast area of the
20 Facility will be traced. The inlet and pipe will be evaluated by Ajax's
21 consultant to determine the proper sizing to handle the flow volume.
22 The inlet and pipe will be replaced if they are not currently, properly
23 sized based on this evaluation. An inlet filter fitted with filter media to
24 address metals and total suspended solids will be installed.

25 c. Discharge from the southwestern area of the Facility, along the
26 southern boundary will be eliminated. Drainage leading to this location
27 will be routed via berms sandbags or curbing to Discharge Point 2
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1 prevent fugitive discharge along the southern boundary. Drainage from
2 rooftops along the western boundary will be routed, via gutters and
3 downspouts, to this Discharge Point 2.

- 4 d. The pavement in the northwestern area of the Facility that is cracked or
5 iron stained will be scraped or power washed, and then coated or
6 repaved.
- 7 e. All roof drains will be fitted with downspouts including filters such as
8 or equivalent to the Kristar FloGard downspout filter
9 ([http://www.kristar.com/index.php/drain-inlet-filtration/flogard-](http://www.kristar.com/index.php/drain-inlet-filtration/flogard-downspout-filter)
10 [downspout-filter](http://www.kristar.com/index.php/drain-inlet-filtration/flogard-downspout-filter)).
- 11 f. Sandbags shall be installed along the east of the Facility to prevent run-
12 on from the metal siding of the neighboring business.
- 13 g. Old parts and scrap stored outdoors at the Facility will be removed or
14 covered with a tarp.
- 15 h. If an Action Plan is required pursuant to paragraphs 22-23 below due
16 to exceedances during the 2017-2018 Wet Season, Ajax shall install
17 rain gutters around the entire roof perimeter of the Facility that route to
18 roof drain downspout filters in compliance with paragraph 15.e, above,
19 by October 1, 2018
- 20 i. Dies stored outdoors at the Facility will be removed or moved off the
21 ground and covered with a tarp.
- 22 j. Ajax shall use HEPA vacuum(s) and vacuum the pavement at entries
23 of the Facility along 48th Street at the end of each day of operations.
- 24 k. At least once per month the Facility shall be swept with a regenerative
25 sweeper.
- 26 l. Area behind metal forging press will be enclosed during operations to
27 prevent dispersal of particulate matter.
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1 m. Grinding area will be enclosed with full length metal or plastic
2 partitions covering open door on northeast of Facility to prevent
3 dispersal of particulate matter.

4 **B. Monitoring and Reporting Program (M&RP)**

5 16. Sample Frequency. The Defendant shall collect storm water samples
6 in the event that discharges occur at the Facility from at least four (4) qualifying
7 storm events per Wet Season in accordance with the 2015 Permit. Any failure
8 to sample a discharge from each discharge location at the Facilities until four
9 (4) storm events per Wet Season have been sampled shall be documented and
10 submitted to Waterkeeper within ten (10) days of the date a sample should have
11 been collected but was not.

12 17. Sample Analysis. The Defendant shall analyze samples collected in
13 accordance with the Permit for Total Suspended Solids, pH, Oil & Grease,
14 Zinc, Nitrate + Nitrite Nitrogen, Aluminum, Iron, Copper, Lead, as well as such
15 additional constituents required by the Permit and those pollutants the
16 Defendant has reason to believe may be present in a stormwater discharge. The
17 Defendant shall select laboratories and analytical limits such that, at a
18 minimum, the method detection limits are below the Numeric Limits in Table 1.

19 18. Sampling Locations. The Defendant shall collect storm water samples
20 from each of the following three outfall locations as depicted in Exhibit A
21 hereto:

22 a. NE (Discharge Point 1) and SE (Discharge Point 2) locations

23 19. Written Report. Defendant shall submit a written report to
24 Waterkeeper at the end of each Wet Season listing all storm events that
25 occurred and resulted in a discharge at any of the Facilities' stormwater outfalls.
26 The report shall be submitted on or before July 30 every year during the term of
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1 this Consent Decree and must include a table summarizing analytical results
2 from Facility's storm water samples and comparing those results to the Numeric
3 Limits in Table 1.

4 20. Revising the M&RP. Within thirty (30) calendar days of the Effective
5 Date of this Consent Decree, Defendant shall revise its M&RP for the Facility
6 to incorporate the requirements of this Consent Decree and the Storm Water
7 Permit. The Defendant shall submit the revised M&RP to Waterkeeper for
8 review and comment as soon as it is completed but in any event no later than
9 thirty (30) calendar days of the Effective Date.

10 a. Waterkeeper shall provide comments, if any, to the Defendant within
11 thirty (30) calendar days of receipt of the revised M&RP. The
12 Defendant shall incorporate Plaintiff's comments into the M&RP, or
13 shall justify in writing why any comment is not incorporated within
14 thirty (30) calendar days of receiving comments. Any disputes over
15 the adequacy of the revised M&RP shall be resolved pursuant to the
16 dispute resolution provisions of this Consent Decree, set out in
17 Section IV below.

18 b. Defendant shall revise the Facility's M&RP if there are any material
19 changes in the Facility's operations, including, but not limited to,
20 changes to stormwater discharge points or BMPs. Defendant shall
21 revise the M&RP within thirty (30) days of the changes and submit
22 the revised M&RP to Waterkeeper for review as provided in
23 paragraph 20.a., above.

24 **C. Numeric Limits**

25 21. Numeric Limits for Storm Water Discharges. Contaminants in a storm
26 water discharge from any discharge point at the Facilities shall not exceed the
27 limits ("Numeric Limits") in Table 1.
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1 **Table 1. Numeric Limits**

2 Contaminant	Numeric Limit
3 Total Suspended Solids	100 mg/L
4 pH	6.5-8.5
5 Oil and Grease	15 mg/L
6 Nitrate + Nitrite Nitrogen	0.68 mg/L
7 Zinc	0.120 mg/L*
8 Aluminum	0.75 mg/L
9 Iron	1.00 mg/L
10 Copper	0.013 mg/L*
11 Lead	0.065 mg/L*

12 NOTE: An * next to a Numeric Limit denotes a CTR Limit. Compliance with
13 CTR based Numeric Limits for metals will be based on an evaluation of dissolved
14 concentrations only.

15 22. Action Plan for Table 1 Exceedances during the Consent Decree. In
16 any Wet Season during which analyses of a storm water sample demonstrate
17 two (2) or more exceedances of the numeric limits detailed in Table 1,
18 Defendant shall prepare and submit a plan for reducing and/or eliminating the
19 discharge of pollutants ("Action Plan") to Waterkeeper by August 15 following
20 the Wet Season in which the exceedances giving rise to the obligation to submit
21 an Action Plan occurred.

22 23. Action Plan Requirements. Each Action Plan submitted shall be in
23 writing and shall include, at a minimum: (1) the identification of the pollutant(s)
24 exceeding Table 1's Numeric Limit(s), (2) an assessment of the source of each
25 exceedance, (3) the identification of additional BMPs that will be implemented
26 to achieve compliance with the Numeric Limit(s), and (4) time schedules for
27 implementing proposed BMPs, which shall not exceed the start of the following
28 Wet Season.

24. Action Plan Review. Waterkeeper shall have 30 days upon receipt of
Defendant's Action Plan to provide Defendant with comments. Within 30 days

1 from the date Waterkeeper comments on Defendant's Action Plan, Defendant
2 shall provide Waterkeeper with a written explanation if Defendant refuses to
3 develop and/or implement any of Waterkeeper's recommended additional
4 BMPs. Any disputes as to the adequacy of the Action Plan shall be resolved
5 pursuant to the dispute resolution provisions set out in Section IV below.

6 25. Defendant shall have until October 1 following the Wet Season in
7 which the exceedances giving rise to the obligation to submit an Action Plan
8 occurred to implement the Action Plan. Defendant shall notify Waterkeeper in
9 writing when the Action Plan has been implemented.

10 26. If any structural BMPs require any government agency approval, then
11 Defendant shall exercise diligent efforts in obtaining such approval. Defendant
12 may contact Waterkeeper to request an extension of the deadline in paragraph
13 22, if necessary, to implement the structural BMPs requiring agency approval.
14 Waterkeeper shall not unreasonably withhold consent to an extension request.

15 **D. Storm Water Pollution Prevention Plan**

16 27. SWPPP Revisions. Within thirty (30) calendar days of the Effective
17 Date of this Consent Decree, Defendant shall revise the SWPPP to identify (1)
18 current BMPs, (2) BMPs developed pursuant to this Consent Decree to control
19 the discharge of pollutants from the Facility as described in paragraph 15, (3) a
20 description of all industrial activities, (4) corresponding potential pollutant
21 sources for industrial activities, (5) a description of the potential pollutants from
22 each source and (6) the revised M&RP as described above in section B. The
23 Defendant shall submit the revised SWPPP to Waterkeeper for review and
24 comment as soon as it is completed, but in any event no later than thirty (30)
25 calendar days of the Effective Date.

- 26 a. Waterkeeper shall provide comments, if any, to Defendant within
27 thirty (30) calendar days of receipt of the SWPPP. Defendant shall
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1 incorporate Plaintiff's comments into the SWPPP, or justify in writing
2 why any comment is not incorporated within thirty (30) calendar days
3 of receiving comments. Any disputes as to the adequacy of the revised
4 SWPPP shall be resolved pursuant to the dispute resolution provisions
5 set out in Section IV of this Consent Decree.

6 b. Defendant shall revise the SWPPP if there are any material changes in
7 the Facility's operations, including, but not limited to, changes to
8 stormwater discharge points or BMPs. Defendant shall revise the
9 SWPPP within thirty (30) days of the changes and submit the revised
10 SWPPP to Waterkeeper for review and comment as provided in
11 paragraph 27.a, above.

12 **E. Employee Training**

13 28. Within thirty (30) calendar days of the Effective Date, Defendant shall
14 develop a formal training program, including any training materials, as
15 necessary, for effective implementation of the training program ("Training
16 Program").

17 29. The Training Program shall ensure (a) that there are a sufficient
18 number of employees delegated to achieve compliance with the Storm Water
19 Permit and this Consent Decree, and (b) that these employees are properly
20 trained to perform the required compliance activities. Such Training Program
21 shall be specified in the SWPPP.

22 30. The Training Program shall require specific training to include at least
23 the following:

24 a. Non-Storm Water Discharge Training. The Defendant shall train
25 all employees about the Storm Water Permit's prohibition of non-storm water
26 discharges so that employees know what non-storm water discharges are, how to
27 detect them, and how to prevent them;

1 b. BMP Training. The Defendant shall train all employees responsible
2 for BMP implementation and maintenance to ensure that BMPs are used
3 effectively to prevent the exposure, discharge, and/or treatment of storm water at
4 the Facilities.

5 c. Sampling Training. The Defendant shall train all individuals
6 collecting samples at the Facility pursuant to this Consent Decree or the Storm
7 Water Permit on the proper sampling protocols, including chain of custody
8 requirements, to ensure storm water and/or non-storm water samples are properly
9 collected, stored, and submitted to a certified laboratory;

10 d. Visual Observation Training. The Defendant shall provide training
11 to all individuals performing visual observations at the Facilities pursuant to this
12 Consent Decree and the Storm Water Permit.

13 31. Training shall be provided by a private consultant or a representative
14 of Defendant familiar with the requirements of this Consent Decree and the
15 Storm Water Permit, and shall be repeated as necessary to ensure that all such
16 employees are familiar with the requirements of this Consent Decree, the Storm
17 Water Permit, and the Facility's SWPPP. All new staff shall receive this
18 training before assuming responsibilities for implementing the SWPPP or the
19 M&RP.

20 32. The Defendant shall maintain training records to document
21 compliance with this paragraph, and shall provide Waterkeeper with a copy of
22 these records within fourteen (14) days of receipt of a written request.

23 **F. Compliance Monitoring and Reporting**

24 33. Annual Site Inspections. Up to three Waterkeeper representatives or
25 consultants (including an attorney), may conduct up to two physical inspections
26 per year ("Site Inspection") of the Facility while this Consent Decree is in
27 effect. Site Inspections shall occur during normal business hours and
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1 Waterkeeper shall provide Defendant with as much notice as possible, but at
2 least twenty-four (24) hours notice prior to a Site Inspection in anticipation of
3 wet weather, and seventy-two (72) hours notice during dry weather. Notice will
4 be provided by telephone and electronic mail. During the Site Inspection,
5 Defendant shall allow Waterkeeper and/or its representatives access to the
6 Facility's SWPPP, M&RP, any and all storm water monitoring records, and to
7 reports and data related to storm water monitoring at the Facilities. During the
8 Site Inspection, Defendant shall allow Waterkeeper and/or its representatives to
9 collect samples of storm water or non-stormwater discharges, and samples from
10 any infiltration galleries or treatment systems, if applicable, at the Facility.
11 Waterkeeper shall be permitted to take photographs or video recording during
12 any Site Inspection. If Waterkeeper takes photographs and/or video recording,
13 Waterkeeper shall provide Defendant with the photographs and/or video within
14 fourteen (14) calendar days after the Site Inspection. Waterkeeper agrees that
15 all individuals participating in a Site Inspection will execute, as necessary,
16 waivers, releases and similar agreements.

17 34. Waterkeeper's Compliance Monitoring. Defendant shall pay a total of
18 seven thousand five hundred dollars (\$7,500.00) to compensate Waterkeeper for
19 costs and fees to be incurred for monitoring Defendant's compliance with this
20 Consent Decree. Payment shall be received within fifteen (15) days of the
21 Effective Date payable to "Los Angeles Waterkeeper" addressed to: Los
22 Angeles Waterkeeper, 120 Broadway, Suite 105, Santa Monica, California
23 90401, and sent via courier or overnight delivery. Failure to submit payment as
24 required under this paragraph will constitute a breach of the Consent Decree.

25 35. Action Plan Payments. Defendant shall pay three thousand, five
26 hundred dollars (\$3,500) each time an Action Plan is submitted to Waterkeeper.
27 Payments shall be made payable to "Los Angeles Waterkeeper" and addressed
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1 to: Los Angeles Waterkeeper, 120 Broadway, Suite 105, Santa Monica, CA
2 90401, and sent via courier or overnight delivery. Failure to submit a payment
3 as required under this paragraph will constitute a breach of the Consent Decree.

4 36.Data Reporting. During the life of this Consent Decree, Defendant
5 shall provide Waterkeeper with a copy of all Consent Decree and Permit
6 compliance and monitoring data, including inspection reports, related to the
7 Facilities' coverage under the Storm Water Permit. The Defendant shall provide
8 Waterkeeper with all laboratory analyses related to sampling at the Facilities
9 within fifteen (15) business days of the Defendant's receipt of such information.

10 37.Document Provision. During the life of this Consent Decree,
11 Defendant shall copy Waterkeeper on all documents and communications
12 related to water quality at the Facility that are submitted to the Regional Board,
13 the State Board, and/or any State, local agency, county, or municipality. Such
14 reports and documents shall be provided to Waterkeeper concurrently as they
15 are sent to the agencies and/or municipalities. Any correspondence related to
16 water quality received from any regulatory agency, State or local agency,
17 county, or municipality shall be provided to Waterkeeper within fifteen (15)
18 business days of receipt by the Defendant.

19 **G. Environmental Project, Reimbursement of Litigation Fees and**
20 **Costs, and Stipulated Penalties**

21 38.Environmental Project. The Defendant agrees to make a payment of
22 seventeen thousand five hundred dollars (\$17,500) to be received within ninety
23 (90) calendar days of the Effective Date to the Rose Foundation for a project
24 related to water quality designed to analyze, reduce, prevent, or otherwise
25 mitigate the ecological and/or public health effects of storm water and/or non-
26 stormwater discharges into Los Angeles area waterbodies. The payment shall
27 be mailed via certified mail or overnight delivery to the attention of Tim Little,
28

1 Rose Foundation for Communities and the Environment, Attn: LA Waterkeeper
2 v. Ajax Forge Co. at 1970 Broadway, Suite 600, Oakland, CA 94612-2218.

3 Defendant shall provide Waterkeeper with a copy of such payment.

4 39. Reimbursement of Plaintiffs' Fees and Costs. The Defendant agrees to
5 partially reimburse Plaintiff for its investigation fees and costs, consultant fees
6 and costs, reasonable attorneys' fees, and other costs incurred as a result of
7 investigating and filing the lawsuit, and negotiating a resolution of this matter in
8 an amount totaling thirty-five thousand dollars (\$35,000) to be paid in three
9 payments. A payment of fifteen thousand dollars (\$15,000) shall be received
10 within thirty (30) calendar days of the Effective Date and made payable to Law
11 Office of Gideon Kracov and delivered by certified mail or overnight delivery
12 at 801 S. Grand Av., 11th Floor, Los Angeles, CA 90017. A second payment
13 for \$10,000 dollars (ten thousand dollars) shall be received within sixty (60)
14 calendar days of the Effective Date and made payable to Law Office of Gideon
15 Kracov and delivered by certified mail or overnight delivery at 801 S. Grand
16 Av., 11th Floor, Los Angeles, CA 90017. A third payment of \$10,000 (ten
17 thousand dollars) shall be received within ninety (90) calendar days of the
18 Effective Date and made payable to Law Office of Gideon Kracov and
19 delivered by certified mail or overnight delivery at 801 S. Grand Av., 11th
20 Floor, Los Angeles, CA 90017

21 40. Stipulated Payment. The Defendant shall make a remediation payment
22 of six hundred dollars (\$600) for each missed deadline included in this Consent
23 Decree. Payments for a missed deadline shall be made for the restoration
24 and/or improvement of the watershed in the area affected by the Defendant's
25 alleged discharges and shall be awarded to the Rose Foundation, and mailed via
26 certified mail or overnight delivery per the instructions above. The Defendant
27 agrees to make the stipulated payment within thirty (30) days of a missed
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1 deadline and make the payment via overnight delivery or by certified mail. The
2 Defendant shall provide Waterkeeper with a copy of each such payment at the
3 time it is made.

4 **H. Agency Review of Consent Decree**

5 41. Plaintiff shall submit this Consent Decree to the Federal Agencies,
6 within three (3) business days of the final signature of the Parties, for agency
7 review consistent with 40 C.F.R. § 135.5. The agency review period expires
8 forty-five (45) calendar days after receipt by both agencies, as evidenced by
9 written acknowledgement of receipt by the agencies or the certified return
10 receipts, copies of which shall be provided to Defendant. In the event that the
11 Federal Agencies object to entry of this Consent Decree, the Parties agree to
12 meet and confer to attempt to resolve the issue(s) raised by the Federal
13 Agencies.

14 **IV. DISPUTE RESOLUTION**

15 42. This Court shall retain jurisdiction over this matter for the purposes of
16 adjudicating all disputes among the Parties that may arise under the provisions
17 of this Consent Decree. The Court shall have the power to enforce this Consent
18 Decree with all available legal and equitable remedies, including contempt.

19 43. Meet and Confer. Either party to this Consent Decree may invoke the
20 dispute resolution procedures of this Section by notifying the other party in
21 writing of the matter(s) in dispute and of the disputing party's proposal for
22 resolution under this Section. The Parties shall then meet and confer in an
23 attempt to resolve the dispute no later than thirty (30) calendar days from the
24 date of the notice.

25 44. If the Parties cannot resolve the dispute within fourteen (14) days after
26 the meet and confer described in paragraph 43, the Parties agree to request a
27 settlement meeting before the Judge assigned to this action. In the event that
28

1 the Parties cannot resolve the dispute by the conclusion of the settlement
2 meeting with the Judge, the Parties agree to submit the dispute via motion to the
3 District Court.

4 45. In resolving any dispute arising from this Consent Decree, the Court
5 shall have discretion to award attorneys' fees and costs to either party. The
6 relevant portions of the then-applicable Clean Water Act and Rule 11 of the
7 Federal Rules of Civil Procedure and applicable case law interpreting such
8 provisions shall govern the allocation of fees and costs in connection with the
9 resolution of any disputes before the District Court. Plaintiff and Defendant
10 agree to file any waivers necessary for the Judge to preside over any settlement
11 conference and motion practice.

12 **V. MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO**
13 **SUE**

14 46. In consideration of the above, upon the Effective Date of this Consent
15 Decree, the Parties hereby fully release, except for claims for Defendant's
16 failure to comply with this Consent Decree and as expressly provided below,
17 each other and their respective successors, assigns, officers, agents, employees,
18 and all persons, firms and corporations having an interest in them, from any and
19 all alleged CWA violations claimed in the Complaint, up to and including the
20 Termination Date of this Consent Decree.

21 47. Nothing in this Consent Decree limits or otherwise affects Plaintiff's
22 or Defendant's rights to address or take any position that it deems necessary or
23 appropriate in any formal or informal proceeding before the Regional Board,
24 EPA, or any other judicial or administrative body on any other matter relating
25 to the Defendant.

26 48. Neither the Consent Decree nor any payment pursuant to the Consent
27 Decree shall constitute or be construed as a finding, adjudication, or
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1 acknowledgement of any fact, law or liability, nor shall it be construed as an
2 admission of violation of any law, rule, or regulation. The Defendant maintains
3 and reserves all defenses they may have to any alleged violations that may be
4 raised in the future.

5 49. Force Majeure. The Defendant shall notify Waterkeeper pursuant to
6 the terms of this paragraph, when timely implementation of the requirements set
7 forth in this Consent Decree becomes impossible, despite the timely good-faith
8 efforts of the Defendant, due to circumstances beyond the reasonable control of
9 the Defendant or its agents, and which could not have been reasonably foreseen
10 and prevented by the exercise of due diligence by the Defendant. Any delays
11 due to Defendant's failure to make timely and bona fide applications and to
12 exercise diligent efforts to obtain necessary permits, or due to normal inclement
13 weather, shall not, in any event, be considered to be circumstances beyond
14 Defendant's control. In no circumstances shall a claim of inability to pay be
15 considered Force Majeure.

16 a. If the Defendant claims impossibility, they shall notify Waterkeeper in
17 writing within twenty-one (21) calendar days of the date that the Defendant first
18 knew of the event or circumstance that caused or would cause a violation of this
19 Consent Decree. The notice shall describe the reason for the nonperformance and
20 specifically refer to this Section. It shall describe: i) the anticipated length of time
21 the delay may persist; ii) the cause or causes of the delay; iii) the measures taken or
22 to be taken by the Defendant to prevent or minimize the delay; iv) the schedule by
23 which the measures will be implemented; and v) the anticipated date of
24 compliance. The Defendant shall adopt all reasonable measures to avoid and
25 minimize such delays.

26 b. The Parties shall meet and confer in good-faith concerning the non-
27 performance and, where the Parties concur that performance was or is impossible,
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1 despite the timely good faith efforts of the Defendant, due to circumstances beyond
2 the control of Defendant that could not have been reasonably foreseen and
3 prevented by the exercise of due diligence by the Defendant, new deadlines shall
4 be established.

5 c. If Waterkeeper disagrees with the Defendant's notice, or in the event
6 that the Parties cannot timely agree on the terms of new performance deadlines or
7 requirements, either party shall have the right to invoke the Dispute Resolution
8 Procedure pursuant to Section IV. In such proceeding, the Defendant shall bear the
9 burden of proving that any delay in performance of any requirement of this
10 Consent Decree was caused or will be caused by force majeure and the extent of
11 any delay attributable to such circumstances.

12 VI. MISCELLANEOUS PROVISIONS

13 50.Construction. The language in all parts of this Consent Decree shall
14 be construed according to its plain and ordinary meaning, except as to those
15 terms defined in the Storm Water Permit, the Clean Water Act, or specifically
16 herein.

17 51.Choice of Law. The laws of the United States shall govern this
18 Consent Decree.

19 52.Severability. In the event that any provision, paragraph, section, or
20 sentence of this Consent Decree is held by a court to be unenforceable, the
21 validity of the enforceable provisions shall not be adversely affected.

22 53.Correspondence. All notices required herein or any other
23 correspondence pertaining to this Consent Decree shall be sent by regular mail
24 or electronic mail as follows:

25 If to Plaintiff:

26 Arthur Pugsley
27
28

1 Melissa Kelly
2 Staff Attorney
3 Los Angeles Waterkeeper
4 120 Broadway, Suite 105
5 Santa Monica, CA 90401
6 arthur@lawaterkeeper.org
7 melissa@lawaterkeeper.org

8 With copies to:
9 Bruce Reznik
10 Executive Director
11 Los Angeles Waterkeeper
12 bruce@lawaterkeeper.org

13 If to Defendant:
14 Jeff McElrath
15 President
16 Ajax Forge Company, Inc.
17 1956 E. 48th Street
18 Vernon, CA 90058

19 With copies to:
20 W. Lee Smith
21 Attorney
22 180 E. Ocean Blvd.
23 Suite 200
24 Long Beach, CA

25 Notifications of communications shall be deemed submitted three (3) days
26 after the date that they are postmarked and sent by first-class mail, or immediately
27 after acknowledgement of receipt via email by the receiving party. Any change of
28 address or addresses shall be communicated in the manner described above for
giving notices.

54. Effect of Consent Decree. Plaintiff does not, by its consent to this
Consent Decree, warrant or aver in any manner that the Defendant's

1 compliance with this Consent Decree will constitute or result in compliance
2 with any federal or state law or regulation. Nothing in this Consent Decree
3 shall be construed to affect or limit in any way the obligation of the Defendant
4 to comply with all federal, state, and local laws and regulations governing any
5 activity required by this Consent Decree.

6 55.Counterparts. This Consent Decree may be executed in any number
7 of counterparts, all of which together shall constitute one original document.
8 Telecopy and/or facsimile copies of original signature shall be deemed to be
9 originally executed counterparts of this Consent Decree.

10 56.Modification of the Consent Decree. This Consent Decree, and any
11 provisions herein, may not be changed, waived, discharged, or terminated
12 unless by a written instrument, signed by the Parties.

13 57.Full Settlement. This Consent Decree constitutes a full and final
14 settlement of this matter.

15 58.Integration Clause. This is an integrated Consent Decree. This
16 Consent Decree is intended to be a full and complete statement of the terms of
17 the agreement between the parties and expressly supersedes any and all prior
18 oral or written agreements, covenants, representations, and warranties (express
19 or implied) concerning the subject matter of this Consent Decree.

20 59.Authority. The undersigned representatives for Plaintiff and
21 Defendant each certify that s/he is fully authorized by the party whom s/he
22 represents to enter into the terms and conditions of this Consent Decree.

23 60. The provisions of this Consent Decree apply to and bind the Parties,
24 including any successors or assigns. The Parties certify that their undersigned
25 representatives are fully authorized to enter into this Consent Decree, to execute
26 it on behalf of the Parties, and to legally bind the Parties to its terms.

27 61. The Parties agree to be bound by this Consent Decree and not to
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1 contest its validity in any subsequent proceeding to implement or enforce its
2 terms. By entering into this Consent Decree, the Defendant does not admit
3 liability for any purpose as to any allegation or matter arising out of this Action.
4

5
6
7 IN WITNESS WHEREOF, the undersigned have executed this [Proposed]
8 Consent Decree as of the date set forth below.

9 LOS ANGELES WATERKEEPER

10
11 Dated: 12/22, 2017


by: _____
Melissa Kelly
Attorney for Plaintiff
LA Waterkeeper

14 LOS ANGELES WATERKEEPER

15
16 Dated: 12/22, 2017


by: _____
Bruce Reznik
Executive Director
LA Waterkeeper

19 MICHEL & ASSOCIATES

20
21 Dated: _____, 2017
22 _____
23 _____
24 _____

by: _____
W. Lee Smith

Attorneys for Defendant
Ajax Forge Company

24 AJAX FORGE CO.

25
26 Dated: _____, 2017
27 _____
28 _____

by: _____
Jeff McElrath
President

1 contest its validity in any subsequent proceeding to implement or enforce its
2 terms. By entering into this Consent Decree, the Defendant does not admit
3 liability for any purpose as to any allegation or matter arising out of this Action.
4
5
6

7 IN WITNESS WHEREOF, the undersigned have executed this [Proposed]
8 Consent Decree as of the date set forth below.
9

10 LOS ANGELES WATERKEEPER

11 Dated: _____, 2017

by: _____
Melissa Kelly
Attorney for Plaintiff
LA Waterkeeper

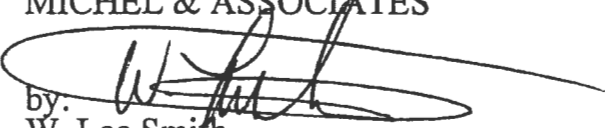
14 LOS ANGELES WATERKEEPER

15 Dated: _____, 2017

by: _____
Bruce Reznik
Executive Director
LA Waterkeeper

19 MICHEL & ASSOCIATES

20 Dated: 12-26, 2017

by: 
W. Lee Smith

22 Attorneys for Defendant
Ajax Forge Company

24 AJAX FORGE CO.

25 Dated: _____, 2017

by: _____
Jeff McElrath
President
Ajax Forge Co.

1 contest its validity in any subsequent proceeding to implement or enforce its
2 terms. By entering into this Consent Decree, the Defendant does not admit
3 liability for any purpose as to any allegation or matter arising out of this Action.
4
5
6

7 IN WITNESS WHEREOF, the undersigned have executed this [Proposed]
8 Consent Decree as of the date set forth below.
9

10 LOS ANGELES WATERKEEPER

11 Dated: _____, 2017

12 by: _____
13 Melissa Kelly
14 Attorney for Plaintiff
15 LA Waterkeeper

16 LOS ANGELES WATERKEEPER

17 Dated: _____, 2017

18 by: _____
19 Bruce Reznik
20 Executive Director
21 LA Waterkeeper

22 MICHEL & ASSOCIATES

23 Dated: _____, 2017

24 by: _____
25 W. Lee Smith
26 Attorneys for Defendant
27 Ajax Forge Company

28 AJAX FORGE CO.

Dated: 12-20, 2017

by: Jim McElrath
Jeff McElrath
President

1
2 **IT IS SO ORDERED:**

3 Date: _____
4

_____ Honorable Otis D. Wright
5 DISTRICT COURT JUDGE
6 CENTRAL DISTRICT OF CALIFORNIA
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EXHIBIT A

Ajax Forge Inc - BMP Diagram

1956 East 48th Street, Vernon, CA 90058

